IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1241 of 2005.

Date of decision : 13.11.2006

Ram Partap and others .....Petitioners

versus

Labh Singh and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Ashok Giri, Advocate for the Petitioners

Mr.N.G.Sharma, Advocate for respondent Nos. 2 & 4.

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ORDER

HEMANT GUPTA, J. (oral)

The challenge in the present revision petition is to the order dated 16.2.2005, passed by the learned trial Court, whereby an application filed by the petitioner-plaintiffs for amendment of the plaint under Order 6 Rule 17 of the Civil Procedure Code, so as to claim the relief of possession in respect of the suit property, was declined.

The present suit for declaration was filed on the ground that the decree dated 4.6.1998 is illegal, null and void and is liable to be set-aside. Plaintiffs have also claimed a decree for permanent injunction restraining defendant Nos.1 to 4 from alienating the suit property. However, by virtue of the amendment, plaintiffs have sought to incorporate the relief of possession on the ground that the same was not available at the time of filing of the suit.

The learned trial Court declined the application on the ground that the application cannot be allowed in terms of the amended provisions of Order 6 Rule 17 of the Civil Procedure Code as the case was fixed for

rebuttal evidence of the plaintiffs. The said reasoning given by the learned trial Court suffers from patent illegality and irregularity. In fact, in terms of Section 16 (2) (b) of the Code of Civil Procedure (Amendment) Act, 2002, amended provisions of Order 6, Rule 17 of the Civil Procedure Code are applicable only in respect of the pleadings filed after the amendment in the Civil Procedure Code which came into force on 1.7.2002. The present suit was filed on 3.9.1998 i.e. much prior to the amended provisions of Order 6 Rule 17 of the Civil Procedure Code came into force. Therefore, the reasoning given by the learned trial Court is not sustainable in law.

Consequently, the present revision petition is allowed. The order dated 16.2.2005, passed by the learned trial Court is set-aside. Plaintiff is permitted to amend the plaint so as to incorporate the relief of possession. It is needless to say that the defendants shall be entitled to file written statement to take such objections, as may be available in accordance with law.

13.11.2006 (HEMANT GUPTA)
*mohinder JUDGE